

February 24, 2004

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0001025**

DRU PICKERING
Code Enforcement Appeal

Location: 15002 – 237th Place Southeast

Appellant: **Dru Pickering**
15002 – 237th Place Southeast
Issaquah, Washington 98027
Telephone: (425) 391-9405

King County: Department of Development and Environmental Services,
represented by **Holly Sawin**
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-6772
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Decision:	Deny appeal; extend date of compliance

EXAMINER PROCEEDINGS:

Hearing Opened:	February 10, 2005
Hearing Closed:	February 10, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On December 1, 2004, the King County Department of Development and Environmental Services issued a Notice and Order to Dru D. Pickering that alleges code violations at property located at 15002 – 237th Place Southeast. The Notice and Order cites the property for violations by the “use and occupancy of a [residential structure] without final inspections and approvals related to building permits B94A1563, B97A2337 and B98Q0477 and failure to obtain required fire suppression permit(s) and/or install the fire suppression system prior to occupancy in violation of [KCC] 16.02.460.” The Notice and Order required that by December 29, 2004, the structures no longer be occupied until the required permits are obtained/renewed and occupancy is approved by DDES.
2. The following physical characteristics and development and permit history pertain to the property and its residential development:
 - A. The original 864 square foot residential structure onsite was permitted in 1991 and “finaled” (*i.e.*, given formal final inspection approval¹) in 1992.
 - B. Road access to the property consists of a private road which serves several other adjacent and nearby short plat lots in addition to the Pickering property. At one location between the public road system and the Pickering lot, the private road crosses a stream critical area.
 - C. Building permit B94A1563 was obtained in May 1994 for a 360 square foot first addition to the original residence.
 - D. Building permit B97A2337 was obtained in 1997 for a two-story, 1,300 square foot second addition to the residence. A revision permit, B98Q0477, was later also issued for the second addition.
 - E. In 1997, at or around the time of the second addition building permit, the King County Fire Marshal communicated formally with Mr. Pickering to inform him of fire code requirements which applied to the structure upon construction of the second addition. The stated requirements called for either a) installation of a sprinkler system for the residence, or b) private road access and turnaround improvements to comply with fire code specifications for fire equipment access. Mr. Pickering acknowledges having received such communication.
 - F. Mr. Pickering requested review of the sprinkler system requirement before the advisory Fire Code Board of Appeals, which in February 2000 granted Mr. Pickering partial relief from fire code requirements by limiting the sprinkler requirement to only the second addition portion, rather than the entire residence, conditioned on installation of a monitored alarm

¹A certification process in lieu of a formal Certificate of Occupancy whereby final inspection approval of a single-family residence is documented as having found development and construction to be in compliance with applicable code requirements.

(central station) system for the whole house. The Fire Marshal accepted the Board's allowance of only a partial sprinkler system. Mr. Pickering did not seek further review of the sprinkler requirement.²

- G. The first and second additions have been constructed. No sprinkler system has been installed in the second addition to the residence. The 1994 and 1997 building permits have not received "final approval."
3. Appellant Pickering, owner of the property, filed a timely appeal of the Notice and Order. The appeal raises the following claims:
- A. The required sprinkler system installation entails a significant and onerous financial burden, and also can only be achieved with "devastating" structural damage or reconfiguration to the existing structure, which will be unsightly and make the home less livable. (Pickering presumes in such regard that a water line extension to serve the sprinkler system must be a greater pipe size than typical for domestic service, and that any extension must be internal within an existing portion of the structure. See Finding 7.)
 - B. The requirement of sprinkler installation was not expressed specifically on the pertinent building permits, and is thus unenforceable.
 - C. Equitable relief should be granted based on Mr. Pickering's assertion that the sprinkler requirement (for a fire suppression system) is being unfairly applied in his case.
4. DDES will allow renewal of the expired building permits, which will allow Mr. Pickering to take advantage, as before, of the partial sprinklering allowance rather than sprinklering the entire structure. (If wholly new building permits were required, they would be subject to current building and fire code provisions; under current code, the entire residence would have to be covered by a sprinkler system. The partial sprinklering arrangement previously approved by the Board would not be permitted under present-day circumstances, but the Fire Marshal considers the subject permits, even on renewal, to have a vested right to the more lenient ruling of the Board.)
5. The only remaining work item necessary to gain final approval for occupancy, once the permits are renewed, is to meet the sprinklering/road improvement requirement for fire code compliance.
6. Mr. Pickering asserts that the fire code alternative of improving the private access road to his property is not feasible. The road is substandard as to width, and width improvement to meet fire code requirements is inhibited by critical area regulations protecting the stream (although such assertion is not supported by any documentary evidence or citation to regulatory provisions). The Deputy Fire Marshal appearing at hearing testified that the only relief available from meeting fire code minimum access specifications is to provide the sprinklering system; there is no other means of obtaining relief from fire code access requirements, such as the minimum road width in question, without providing the sprinklering.

²Mr. Pickering requests that the Examiner revisit the Board's decision and that, in lieu of the sprinkler system, a hardwired smoke detection/alarm system installed throughout the entire residence be accepted as sufficient. The Examiner has no jurisdiction in this proceeding to consider the request.

7. In August 2000, Mr. Pickering obtained a sprinkler system plan designed by a fire sprinkler consultant, and has based his objections and concerns to the sprinklering requirement largely on that design, but as informed at hearing by the Deputy Fire Marshal, there are many engineering design variables that can be manipulated in arriving at a system design meeting the basic requirement of sufficient sprinkler flow rate and duration. Such variables can include secondary pumping, onsite storage, and routing of the water service lines exterior to the existing structures rather than interior in order to minimize interior disruption. Mr. Pickering acknowledged that he has not fully explored alternatives to the single design which he obtained in order to minimize disruption and expense.
8. Mr. Pickering contends that the sprinklering requirement was not expressly noted on his building permit, a fact which cannot be discerned from the record presented because the subject permit (the 1997 permit for the second addition) was not introduced into evidence. Mr. Pickering argues that the sprinklering requirement is thus unenforceable.
9. Mr. Pickering also claims unequal and unfair enforcement of fire code requirements in this matter, contending that neighbors on the same private road have been permitted to remodel and/or construct additions to their residences without sprinklering requirements. No supportive evidence is offered to substantiate such claim, either with regard to the basic assertion or to the similarity of construction circumstances.

CONCLUSIONS:

1. The fairness/equity issue raised by Mr. Pickering is tantamount to a claim of *equitable estoppel* in that Pickering claims unequal and unfair enforcement of code requirements and that the County should be barred from enforcing the sprinkler requirement in his case. The Examiner as a quasi-judicial hearing officer is generally limited to adjudicating matters under “black letter” law, *i.e.*, law enacted in statutory or ordinance form. Washington case law limits the Examiner’s exercise of common and constitutional law in deciding cases. [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 638, 689 P.2d 1084 (1984)] The equity claim would have to be brought in a court of law.
2. Aside from the fact that it is not supported by substantial evidence, Mr. Pickering’s assertion that the sprinklering requirement is not enforceable because it was not expressly noted on his building permit is a red herring: The Notice and Order is not limited to the subject building permits, but cites as the violation in question the “Use and occupancy of a structure(s) without final inspections and approvals *related to* building permits B94A1563, B97A2337 and B98Q0477 and failure to obtain the required fire suppression permit(s) and/or install the fire suppression system prior to occupancy in violation of Section 16.02.460 [KCC].” (Emphasis added) The Notice and Order goes on to require that occupancy be ceased and the structure be secured from unauthorized entry until “the required permit(s) are obtained (or renewed) and occupancy is approved by this department.” (Emphasis added) The Notice and Order thus encompasses more than the building permits: it also addresses other inspections and approvals

necessary for code compliance, such as the fire code requirements for sprinklering (or road improvement in the alternative) which Mr. Pickering has acknowledged having known. The building permits are essentially the vehicle for the review and approvals required for occupancy, but are not an exclusive and exhaustive delimitation of applicable code requirements.

3. The first and second structural additions to the residence are in use and occupancy without required final inspections and approvals as charged by the Notice and Order. The Notice and Order is therefore correct and shall be sustained. The appeal shall accordingly be denied, except that the deadline for compliance shall be extended to account for the time taken up by the appeal.
4. Since human occupancy of the second addition without proper compliance with the fire code as applied in this case would comprise a potential fire and life safety hazard, the Examiner cannot in good conscience consent to occupancy of the second addition until the required inspections and approvals have been completed to demonstrate necessary code compliance. The Examiner accordingly must reiterate DDES's direction in the Notice and Order to cease occupancy of the structure pending code compliance. (DDES appeared to back off such stringent requirement at hearing, due to the length of time the structure has already been occupied without final approval, but the Examiner finds such leniency in a fire and life safety situation to be inappropriate for obvious safety reasons.)

DECISION:

The appeal is DENIED.

ORDER:

1. Cease occupancy of the second addition of the residence and secure such portion from unauthorized entry by *no later than March 7, 2005, except that if operating smoke detectors are not properly located within the second addition, occupancy shall be discontinued immediately*. Occupancy of the second addition shall not be resumed until final approval of code compliance is granted by DDES in writing.
2. *Within 15 days of the date of this Order*, renewal of the necessary building permits shall be obtained for the second addition to the residence.
3. Final approval of the second addition for code compliance shall be obtained *within one year from the date of issuance of the renewed permits*.
4. No penalties shall be assessed against the Appellant or the property if all the deadlines stated above are met. If any of the deadlines are not met, DDES may impose penalties retroactive to the date of this Order.

ORDERED this 24th day of February, 2005.

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 24th day of February, 2005, via certified mail to the following:

Dru Pickering
15002 – 237th Pl. SE
Issaquah, WA 98027

TRANSMITTED this 24th day of February, 2005, to the following parties and interested persons of record:

Dru Pickering
15002 - 237th Pl. SE
Issaquah WA 98027

Suzanne Chan
DDES, Code Enf.
MS OAK-DE-0100
MS OAK-DE-0100

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DDES/LUSD
Code Enf. Supvr.

Paul Eichhorn
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NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE FEBRUARY 10, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0001025.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Holly Sawin and Bernard Moore, representing the Department; Dru Pickering, the Appellant; and Paul Eichhorn, Deputy Fire Marshal.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 Staff report to the Hearing Examiner
- Exhibit No. 2 Copy of the Notice & Order issued on December 1, 2004
- Exhibit No. 3 Copy of Notice and Statement of Appeal dated December 12, 2004
- Exhibit No. 4 Copies of codes cited in the Notice & Order
- Exhibit No. 5 iMap of subject property
- Exhibit No. 6 B94A1563 site plan
- Exhibit No. 7 B97A2337 site plan
- Exhibit No. 8 Hand-drawn plan of Pickering residence
- Exhibit No. 9 Sprinkler installation plan by James Buchanan, dated August 14, 2000
- Exhibit No. 10 Construction permit no. B04Q0197 (revision to no. B04M0487), issued 06/09/2004
- Exhibit No. 11 Drawing done by Mr. Pickering depicting the location of the area residences and the road that serves them
- Exhibit No. 12 Copy of construction permit (activity no. B94A1563) for subject residence, issued 05/17/95